



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,995	03/17/2004	Angel Lynn Wygant	JSF11-0001	4375

7590 05/14/2009
James Finn
1820 Woods Road
Annapolis, MD 21401

EXAMINER

YOON, JANE SUJIN

ART UNIT	PAPER NUMBER
----------	--------------

4137

MAIL DATE	DELIVERY MODE
-----------	---------------

05/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/802,995	Applicant(s) WYGANT, ANGEL LYNN	
	Examiner JANE S. YOON	Art Unit 4137	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/17/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:
 - Pg. 1, line 10: "near a hot water" should be reworded as --near hot water--;
 - Pg. 4, line 16: "preferred embodiment of the present invention is provided" should be reworded as --preferred embodiment, the present invention **provides**--;
 - Pg. 4, line 21: "layer to user" should be reworded as --layer to **the** user--;
 - Pg. 5, line 1: "present invention placing an" should be reworded as --present invention, placing an--;
 - Pg. 5, line 4: "hood and loop" should be reworded as --**hook** and loop--;
 - Pg. 5, line 11: "preferred embodiment of the present invention is provided" should be reworded as --preferred embodiment, the present invention **provides**--;
 - Pg. 7, line 1: Examiner recommends changing the sub-heading "Description of the Preferred Embodiment" to be --**Detailed** Description of the **Invention**--;
 - Pg. 7, line 14: "vaporizing and transferring" should be reworded as --vaporizing **substance** and transferring--;
 - Pg. 8, line 3: "be least 4" should be reworded as --be **at** least 4--;

- Pg. 8, lines 4-6: "opening the diameter of which is at least 4 inches from the user's neck 12 with 2 mating pieces 14 and 15 that fasten 16 behind the neck of the user with a fastening device that holds" should be reworded to -- opening **12**, the diameter of which is at least 4 inches from the user's neck, with **two** mating pieces 14 and 15 that fasten behind the neck of the user with a fastening device **16** that holds-- since the reference numeral should follow the word it is referencing;
- Pg. 8, line 21: "for a fastener as a hole, large" should be reworded as --for a fastener, as a hole large--.

Appropriate correction is required.

Claim Objections

2. Claims 4 and 11 are objected to because of the following informalities:
 - the phrase "hood and loop fastener" should be reworded as --**hook** and loop fastener--.

Claims 9 and 10 should be dependent on method Claim 8, not Claim 1 as they are drawn to method claims instead of apparatus claims.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. Claims 1 (line 7), 5 (line 2), and 12 (line 17) recite the limitation "said area."

There is insufficient antecedent basis for this limitation in the claim. Examiner

Art Unit: 4137

recommends that "said area for said vaporizing substance" in Claim 1 and "said area for receiving said vaporizing substance" in Claims 5 and 12 be reworded as --said **portion** for **placement of** said vaporizing substance--.

4. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Particular attention is drawn to the phrase "for placement of a vaporizing substance" which recites functional language and does not positively require the method to utilize a vaporizing substance. However, the subsequent step, "covering said vaporizing substance," recites the limitation of the vaporizing substance. The Examiner has interpreted the step, "covering said vaporizing substance," to mean --covering said portion for placement of a vaporizing substance--.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1-15, 17, 18, and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Lehrer (U.S. Patent 5,490,289, hereinafter, Lehrer).**

Regarding Claim 1, Lehrer discloses an apparatus, capable of housing a vaporizing substance that comprises a fabric layer **12** which has a portion (shown in **FIG. 1**) that is capable of placement of a vaporizing substance, and a cover **42**, which is

Art Unit: 4137

placed over the area for a vaporizing substance on the fabric layer **12**. Lehrer further discloses that the cover **42** is formed of a gas permeable material (specific mention of terrycloth fabric which is a gas permeable material in col. 3, lines 17-18), and that there is an attaching device **46** for attaching the fabric layer **12** to a user.

Regarding Claim 2, Lehrer discloses an apparatus capable of housing a vaporizing substance, as applied to Claim 1 above. Lehrer further discloses that the fabric layer **12** is bib shaped (shown in **FIG. 1** where reference numeral **10** refers to a “bib”).

Regarding Claim 3, Lehrer discloses an apparatus capable of housing a vaporizing substance, as applied to Claim 1 above. Lehrer further discloses that the attaching device **46** for attaching the fabric layer **12** to the user is an opening **14** in the fabric for placement around the neck of the user (shown in **FIG. 1**, col. 3, lines 30-33).

Regarding Claim 4, Lehrer discloses an apparatus capable of housing a vaporizing substance, as applied to Claim 3 above. Lehrer further discloses that the opening **14** in the fabric (shown in **FIG. 1**) is formed by joining two mating longitudinal fabric members **18** integral to and at one end of the fabric and attached together around a users neck by a hook and loop fastener (col. 3, lines 30-39).

Regarding Claim 5, Lehrer discloses an apparatus capable of housing a vaporizing substance, as applied to Claim 3 above. Lehrer further discloses that the area for receiving the vaporizing substance comprises a leak-resistant material that prevents the vaporizing substance from coming in contact with the body of the user (col. 3, lines 38-40).

Regarding Claim 6, Lehrer discloses an apparatus capable of housing a vaporizing substance, as applied to Claim 1 above. Lehrer further discloses that the portion of the fabric layer **12** that is capable for placement of a vaporizing substance consists of a slot **24** integral to the fabric layer (shown in **FIG. 1**) into which a device containing a vaporizing substance can be placed.

Regarding Claim 7, Lehrer discloses an apparatus capable of housing a vaporizing substance, as applied to Claims 1 above, wherein the attaching device **46** is a hook and loop fastener (col. 3, lines 31-35).

Regarding Claim 8, it is noted that the preamble of Claim 8 is not accorded any patentable weight since it merely recites the purpose of the method, and because the body of the claim does not depend on the preamble for completeness, which means the process steps are able to stand alone. Therefore, the method disclosed by Lehrer, which comprises the steps of: providing a fabric layer **12** having a portion thereon which is capable of receiving a vaporizing substance (such as a liquid), covering the portion capable of receiving a vaporizing substance with a gas permeable material **42** (shown in **FIG. 1**, specific mention of terrycloth fabric which is a gas permeable material in col. 3, lines 17-18), and attaching the fabric layer **12** to a user (col. 3, lines 30-39), would embrace the Applicant's recited method of housing a vaporizing substance in proximity to a user's nasal passage.

Regarding Claim 9, Lehrer discloses a method which would embrace the Applicant's recited method of housing a vaporizing substance in proximity to a user's

Art Unit: 4137

nasal passage, as applied to Claim 8 above, wherein the fabric layer **12** is bib shaped (shown in **FIG. 1** where reference numeral **10** refers to a “bib”).

Regarding Claim 10, Lehrer discloses a method which would embrace the Applicant's recited method of housing a vaporizing substance in proximity to a user's nasal passage, as applied to Claim 8 above, wherein the step of attaching the fabric layer **12** to a user includes placing an opening **14** in the fabric layer around the neck of the user (shown in **FIG. 1** and specifically mentioned in col. 3, lines 30-33).

Regarding Claim 11, Lehrer discloses a method which would embrace the Applicant's recited method of housing a vaporizing substance in proximity to a user's nasal passage, as applied to Claim 10 above. Lehrer further discloses that the opening **14** in the fabric for placement around the neck of the user is formed by joining two mating longitudinal fabric members **18** integral to and at one end of the fabric and attached together around a users neck by a hook and loop fastener (col. 3, lines 30-39).

Regarding Claim 12, Lehrer discloses a method which would embrace the Applicant's recited method of housing a vaporizing substance in proximity to a user's nasal passage, as applied to Claim 10 above, wherein the area capable of receiving the vaporizing substance comprises a leak-resistant material that prevents the vaporizing substance from coming in contact with the body of the user (specific mention of the layer being waterproof to insure a substance does not pass through and stain the user in col. 3, lines 38-40).

Regarding Claim 13, Lehrer discloses a method which would embrace the Applicant's recited method of housing a vaporizing substance in proximity to a user's

Art Unit: 4137

nasal passage, as applied to Claim 10 above, wherein the portion of the fabric layer capable for placement of a vaporizing substance consists of a slot **24** integral to the fabric layer (shown in **FIG. 1**) into which a device containing a vaporizing substance can be placed.

Regarding Claim 14, Lehrer discloses a method which is capable of housing a vaporizing substance, as applied to Claim 10 above, wherein the attaching device **46** is a hook and loop fastener (col. 3, lines 31-35).

Regarding Claim 15, Lehrer discloses an apparatus, which is capable of securing a substance proximately to a predefined area on a user's body (col. 3, lines 30-33), which comprises a layer of material **12** capable of being attached to a user, a substance placement area located on the layer of material, and a cover **42** associated with the layer of material **12** capable of being placed over the substance placement area (shown in **FIG. 1**). Lehrer further discloses that the cover **42** is formed of terrycloth (col. 3, line 17-18), which is a gas permeable material.

Regarding Claim 17, Lehrer discloses an apparatus for securing a substance proximately to a predefined area on a user's body, as applied to Claim 15 above. Lehrer further discloses that the layer of material **12** is a layer of fabric (specific mention of polyester/cotton broadcloth which would be a type of fabric in col. 2, lines 37-39) shaped as a baby bib (shown in **FIG. 1**, reference numeral **10** refers to a "bib").

Regarding Claim 18, Lehrer discloses an apparatus for securing a substance proximately to a predefined area on a user's body, as applied to Claim 15 above,

Art Unit: 4137

wherein the layer of material **12** is attached to the user by hook and loop fastener **46** (col. 3, lines 31-35).

Regarding Claim 20, Lehrer discloses an apparatus for securing a substance proximately to a predefined area on a user's body, as applied to Claim 15 above. Lehrer further discloses that the substance placement area located on the layer of material **12** includes a slot **24** integral to the layer of material **12** (shown in **FIG. 1**) in which a device containing a vaporizing substance can be placed.

Regarding Claim 21, Lehrer discloses an apparatus for housing a vaporizing substance, as applied to Claim 1 above, wherein the fabric layer **12** is constructed of a disposable cloth-like material (specific mention of polyester/cotton broadcloth in col. 2, lines 37-39).

Regarding Claim 22, Lehrer discloses an apparatus for housing a vaporizing substance, as applied to Claim 21 above, wherein the disposable cloth-like material is bib-shaped (shown in **FIG. 1**, reference numeral **10** refers to a "bib").

6. Claims 1, 6, 8, 15, 16, and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Braunroth (U.S. Patent 4,503,851, hereinafter, Braunroth).

Regarding Claim 1, Braunroth discloses an apparatus for housing a vaporizing substance, which comprises a fabric layer **41** that has a portion **50** thereon for placement of a vaporizing substance **55** (specific mention of substance evaporating through apertures in col. 4, lines 8-9), and a cover **52B** associated with the fabric layer **41** that is placed over the area **50** for the vaporizing substance **55**. Braunroth further

Art Unit: 4137

discloses that the cover **52B** is formed of gas permeable material (shown in **FIG. 7**; layer **52B** is perforated with a plurality of apertures **56** which allow it to be gas-permeable; specific mention of the substance **55** evaporating through the apertures **56** is in col. 4, lines 8-9), and that the apparatus further comprises an attaching device **42** for attaching the fabric layer **41** to a user.

Regarding Claim 6, Braunroth discloses an apparatus for housing a vaporizing substance, as applied to Claim 1 above. Braunroth further discloses that the portion of the fabric layer **41** for placement of a vaporizing substance **55** consists of a slot **52** integral to the fabric layer (shown in **FIG. 6**) into which a device **54** containing a vaporizing substance can be placed.

Regarding Claim 8, Braunroth discloses a method of housing a vaporizing substance in proximity to a user's nasal passage (shown in **FIG. 1**) comprising: providing a fabric layer **41** which has a portion **50** thereon for placement of a vaporizing substance **55**, covering the vaporizing substance **55** with a gas permeable material **52B**, and attaching the fabric layer **41** to the user (shown in **FIG. 1**).

Regarding Claim 15, Braunroth discloses an apparatus for securing a substance proximately to a predefined area on a user's body, which comprises a layer of material **41** capable of being attached to a user (shown in **FIG. 1**), a substance placement area **50** located on the layer of material **41**, and a cover **52B** associated with the layer of material **41**, which is placed over the substance placement area (shown in **FIG. 5**). Braunroth also discloses that the cover is formed of gas permeable material (shown in **FIG. 7**; layer **52B** is perforated with a plurality of apertures **56** which allow it to be gas-

permeable; specific mention of the substance **55** evaporating through the apertures **56** is in col. 4, lines 8-9).

Regarding Claim 16, Braunroth discloses an apparatus for securing a substance proximately to a predefined area on a user's body, as applied to Claim 15 above, wherein the predetermined area on the user's body is the user's nasal passage (shown in **FIG. 1**).

Regarding Claim 19, Braunroth discloses an apparatus for securing a substance proximately to a predefined area on a user's body, as applied to Claim 15 above, wherein a vaporizing substance **55** is placed on the substance placement area **50** located on the layer of material **41** (shown in **FIG. 5** and **FIG. 6**: specific mention of placing the vaporizing substance in the substance placement area in col. 3, lines 66-67).

Regarding Claim 20, Braunroth discloses an apparatus for securing a substance proximately to a predefined area on a user's body, as applied to Claim 15 above. Braunroth further discloses that the substance placement area **50** located on the layer of material **41** includes a slot **52** integral to the layer of material **41** (shown in **FIG. 6**) in which a device **54** containing a vaporizing substance **55** can be placed.

Regarding Claim 21, Braunroth discloses an apparatus for housing a vaporizing substance, as applied to Claim 1 above, wherein the fabric layer **41** is constructed of a disposable cloth-like material (specific mention of a woven fabric in col. 3, lines 51-52 which is known in the art to be a cloth-like material, and specific mention of the apparatus being disposable in col. 4, line 25).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JANE S. YOON whose telephone number is (571) 270-1403. The examiner can normally be reached on M-F 8:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. S. Y./
Examiner, Art Unit 4137

May 7, 2009

/Sam Chuan C. Yao/
Supervisory Patent Examiner, Art Unit 4111